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S/N: 09/747,647

REMARKS

Claims 1-21 are pending in the present application. In the Office Action mailed July 13, 2005, the Examiner rejected claims 1-8 under 35 U.S.C. §101. The Examiner next rejected claims 1, 4-6, and 8 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. (USP 5,809,479) in view of Dietrich (USP 6,032,121). Claims 2, 3, 7, and 9-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Martin et al. '479 in view of Dietrich, and further in view of Schoenberg (USP 6,322,502).

The Examiner has rejected claims 1-8 under 35 U.S.C. §101 asserting that "the claimed invention is directed to non-statutory subject matter." The Examiner further states that "Applicant can insert 'electronic' in front of 'database' and the 35 U.S.C. §101 rejection would be withdrawn." To expedite prosecution of the above-captioned matter, Applicant has amended claim 1 to call for, in part, periodically querying an electronic database as suggested by the Examiner. Accordingly, Applicant requests that the 35 U.S.C. §101 rejection be withdrawn.

The Examiner next rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. '479 in view of Dietrich stating that "[t]he Examiner takes Official Notice that it is old and well known to identify product categories for product orders" and that "[t]he Examiner cites Martin et al. (USP 6,606,607) as factual evidence that it is old and well known for product order data to include data related to product categories (see column 4, lines 36-40)." In the Response of April 26, 2005, Applicant objected to the Examiner's use of Official Notice stating that "Applicant objects to the Examiner's taking of Official Notice and requests that the Examiner provide support that it is old and well known to identify product categories for product orders." The Examiner further asserts that "Applicant's traversal [of the Examiner's use of Official Notice] is inadequate because Applicant failed to specifically point out the supposed errors in the examiner's actions, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." Applicant made such a showing in requesting the Examiner provide documentation for his assertions based on Official Notice. The Examiner's reasoning is circular. Simply, the Examiner failed to provide any documentation for his assertion of what is "common and well-known" and Applicant objected to the unsupported use of Official Notice and requested documentation which supports the assertion. In the Office Action of July 13, 2005, the Examiner provided such documentation with Martin et al. '607. If the Examiner has a reference which discloses the subject matter of which the Examiner has taken Official Notice, the use of Official Notice is improper. That is, the Examiner appears to be attempting to circumvent the requirements of 35 U.S.C. §103(a) by combining a pair references (Martin et al. '479 and Dietrich) and Official Notice (allegedly supported with Martin et al. '609) to reject the

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present claims rather than articulating a three-way §103(a) rejection based on Martin et al. '479, Dietrich, and Martin et al. '607. Nonetheless, in the Response of April 26, 2005, Applicant clearly articulated the failure of Martin et al. '479 and Dietrich to teach and/or suggest that which is called for in claim 1. The addition of Martin et al. '607 adds nothing to the rejection thereto.

Martin et al. '609, titled "INDIVIDUAL, REAL-TIME, INTERACTIVE E-COMMERCE AUCTION" is directed to a system of conducting an automated auction. Abstract. That is, the system of Martin et al. is directed to a sale system rather than a method of reporting status of work in progress in presently claimed. The product data stored in the system of Martin et al. '609 is related to the products to be auctioned and not to a promise date, a request date, a shipment date, and a product category as called for in claim 1. That is, the system of Martin et al. '609 does not address delivery time and status of products purchased during the auction. Such is clearly evidenced in the failure of Martin et al. '609 to reference delivery of the purchased product. Should the Examiner wish to maintain the rejection of claim 1, as the Examiner alleges that Martin et al. '609 clearly discloses the subject matter previously addressed as Official Notice, for purposes of appeal, Applicant requests that the Examiner provide pinpoint citations to Martin et al., Dietrich, and Martin et al. '607 that support a rejection of the claims under 35 U.S.C. §103(a). As argued in the Response of April 26, 2005, Applicant believes claim 1, and the claims which depend therefrom, are patentably distinct over Martin et al. '479 in view of Dietrich and the use of Official Notice. As argued above, Applicant also believes that the claims are patentably distinct over Martin et al. '479, Dietrich, and Martin et al. '609.

The Examiner also maintains the rejection of claims 9 and 15 as unpatentable over Martin et al. '479 in view of Dietrich and further in view of Schoenberg stating that "Applicant [argues] the references individually instead of arguing the full combination of references relied upon" and that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin [Martin et al. '479]/Dietrich with reactive alerts as taught by Schoenberg, because the use of reactive alerts are helpful management tools for correcting problems when undesired activities have already occurred." Applicant has not argued the references individually as alleged. Applicant merely provided the support, from the references themselves, why a person of ordinary skill in the art would not be motivated to combine the references in the manner done by the Examiner. To support a rejection under 35 U.S.C. §103(a), three criteria must be satisfied. The references, rather than Applicant's disclosure, must include a motivation to combine the references in a way done by the Examiner, the combination of must include a likely to be success, and all the elements of the present claims must be present in the references. As argued in the

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Response of April 26, 2005, the art of record fails to teach, suggest, or disclose that which is presently claimed.

Claims 9 calls for, in part, setting a proactive alert if a promise date is later than a request date, setting a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date and displaying any promise and shipment alerts by product category and type of alert. Claim 15 calls for, in part, setting a proactive alert if any promise date is later than a request date, setting a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date, and displaying all proactive and reactive alerts by product/service category and type of alert. The art of record neither teaches nor suggests that called for in claims 9 and 15.

Dietrich et al. discloses a method of proactive planning. That is, the system of Dietrich et al. calls for generating a new plan if an event is not satisfiable by the current plan. Dietrich et al. states that "a proactive planning methodology can use information about changes in the input data used for planning to determine when a next plan should be produced." Dietrich, et al., col. 2, ln. 66 to col. 3, ln. 2 (emphasis added). Dietrich et al. further states that "while the first method would typically be used to determine if a new plan should be generated immediately, this second method is used to determine the most appropriate time to begin the next planning process, that is, to schedule the next planning event." Dietrich et al., col. 8, lns. 40-44. That is, if there is a potential failure of the present plan, Dietrich et al. teaches scheduling a planning event either immediately or sometime in the near future. This is not what is claimed in claims 9 and 15.

Schoenberg et al. discloses a medical information system that receives patient data and information from various sources and displays such information in a variety of formats for use by members of a medical team. See Schoenberg et al., Abstract. Schoenberg et al. discloses generating operational reminders for each action item that is transmitted between different members of a patient's medical treatment team. See Schoenberg et al. col. 5, lns. 40-42. Schoenberg et al. further discloses that the system permits the entry of confirmatory information by respective members of a patient's medical treatment team and further, that if a treatment, i.e. medication, is not delivered as prescribed by the patient's doctor, an alarm is indicated to notify the medical team that an order, i.e. medicating of a patient, has not yet been carried out. See Schoenberg et al., col. 5, lns. 43-48.

The system of Schoenberg et al. provides for intercommunication between a plurality of individual health care personnel who may be associated with a specific patient. See Schoenberg et al., col. 6, lns. 13-37. As a patient's primary physician determines a medication regimen for the patient, the patient's prescribed medication regimen is input into the system and

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communicated to the pharmacist who distributes the medications, and the resident assistants or nurses who administer the proscribed medications to the patient. *Id.*

Unrelated to Schoenberg et al., Martin et al. '479 discloses a system of tracking and reporting on-time delivery performance of goods. Martin et al. discloses a system that determines a delivery window for individual customers. See Martin et al. '479, Abstract. The delivery window determines when the customer considers goods to be delivered on time. *Id.* For each subsequent order, the customer provides a customer-requested delivery date. *Id.* A customer-preferred ship date is then determined by comparing the customer-requested delivery date and the delivery window characteristics. *Id.* The system then shows to an order scheduler -- a person -- the customer-preferred ship date and obtains a targeted ship date for the order from the order scheduler. *Id.* The order scheduler then dictates what the actual ship date will be and in so doing, knows whether a specific order will be delivered after a customer-requested ship date. *Id.* The system maintains delivery statistics for each customer and determines on-time delivery statistics for each customer. *Id.* That is, if an order is going to be shipped to a customer after a customer-requested ship date, the human order scheduler is abundantly aware of a late shipment date as it is that very order scheduler that dictates which orders will be delivered late. Since the system of Martin et al. '479 is directed to tracking and reporting on-time delivery statistics, Martin et al. '479 acknowledges that some deliveries will be delivered after a customer-requested ship date and will therefore be delivered late.

Since Martin et al. '479 is interested in after-completion report generating, there would be no motivation to combine the system of Martin et al. '479 with any alerting function that may be disclosed in Schoenberg et al. or Dietrich et al. That is, because the scheduler referred to in Martin et al. '479 already knows that an order will be delivered after a customer-requested delivery date, it would be fruitless to alert the very scheduler that the date that they just knowingly entered is after the customer-requested delivery date. Such would be contrary to the teaching of the reference. As supported above, the art of record does not teach, disclose, or suggest a motivation for reporting status of work in progress, including setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive promise alerts with the order numbers.

Further, the general nature of the system of Martin et al. '479 is not directed to any alert function, either reactive or proactive -- as displaying or generating any alert is not even disclosed in Martin et al. '479. Martin et al. '479 teaches a system whereby a human scheduler, based on manufacturing capacity or other parameters, changes a delivery date to a date beyond the customer request date. See Martin et al. '479, col. 3, ln. 59 to col. 4, ln. 1. This is accomplished

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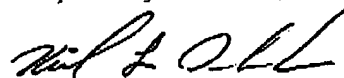
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by a manual review of all the orders. Martin et al. '479, col. 3, lns. 59-61. As the delivery date of Martin et al. '479 is controlled by the human scheduler's input upon the manual review of all the orders, there is no motivation in either reference or combination thereof to include any alert based upon shipment date and request date comparisons. It is clear that Martin et al. '479 requires a human scheduler to review orders and dictate the date of delivery thereby making the customer subject to deviations from a requested delivery date. Id. As such, within the context of Martin et al. '479, there is no motivation to provide any alert -- reactive or proactive. Martin et al. '479 teaches that the scheduler reviews all the orders and manipulates the delivery date -- therefore he already knows that a specific delivery will be late. Martin et al. '479, col. 3, lns. 61-66. As such, there is no motivation to provide an alert for that which is already known. Therefore, as shown above, the art of record does not include the motivation to combine the references in the manner done by the Examiner. Further, assuming that the requisite motivation to combine is present, as set forth above, the references, taken singly or in combination, fail to teach and or suggest each and every element called for in the claims. For all the reasons set forth herein and further in the Response of April 26, 2005, Applicant believes claims 9 and 15, and the claims which depend therefrom, respectively, are patentably distinct over the art of record.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-21.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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